

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7386 of 2007()

CRIME NO.647/2005 OF KOTTIYAM POLICE STATION

PETITIONERS:

1. SAJEEV.A.AGED 30 YEARS,
S/O.ABDULKHAREEM, NELLIVILA VEEDU,
KANNANALLOOR, KOLLAM.
2. NIZAR, AGED 20 YEARS,
S/O. ABDULSALAM, MANAKUDIYIL VEEDU,
KIZHAVOOR MUKHATHALA, KOLLAM.
3. KOSHY,S/O. FRANCIS,KIZHANGUVILA VEEDU
THRIKKOVILVATTOM P.O.,KANNANALLOOR ,
KOLLAM.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM.
2. SUB INSPECTOR OF POLICE
CHATHANNOOR POLICE STATION.

BY PUBLIC PROSECUTOR S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

B.A. No. 7386 OF 2007

Dated this the 30th day of November, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 3. They face allegations in a crime registered for offences punishable under Secs.452, 427 and 324 of the IPC and Sec.27 of the Arms Act. The alleged incident took place at about 10.30 p.m. on 9/11/07. On account of animosity arising from an earlier incident, the accused persons armed with dangerous weapons allegedly trespassed into the house of the de facto complainant and indulged in wanton acts of violence and mischief. Damage was caused to the house of the de facto complainant. The scene mahazar contains the description of the damage, submits the learned Public Prosecutor. The learned counsel for the petitioners submits that the allegations are totally false and that in any view of the

matter, it can only be reckoned as an altercation between the two neighbours on certain disputes. The allegations have been exaggerated to include the non-bailable offence. The petitioners may be granted anticipatory bail, it is prayed.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the materials presently available clearly point to the complicity of the petitioners. The petitioners had trespassed into the peace of the home of the de facto complainant. There are no circumstances justifying or warranting the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I agree with the learned Public Prosecutor that this is a fit case where the petitioners must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I do not find any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

4. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the

B.A. No. 7386 OF 2007 -: 3 :-

Investigating Officer or the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge